

Attorney Docket No.: J3682(C)
Serial No.: 10/521,981
Filed: January 21, 2005
Confirmation No.: 1485

REMARKS

Claim 1 has been amended to specify that the composition comprises styling ingredients that consist essentially of 2-hydroxyalkanoic acid, and, optionally, styling polymer and, optionally, a neutralizing agent for the styling polymer. See, for example, page 3, lines 7 to 8, and page 8 line 23 to page 9, line 6. Claim 1 has been further amended to require that the 2-hydroxyalkanoic acid comprises at least one acid selected from the group consisting of 2-hydroxyhexanoic acid, 2-hydroxyoctanoic acid and 2-hydroxydecanoic acid. See page 2, line 10 to page 3, line 1. Claims 2 and 6 have been amended to correct a typographic error.

Claims 7 and 8 have been cancelled without prejudice; it is respectfully submitted that the cancellation of these claims moots the 35 USC 101 and 35 USC 112 rejections applied thereto. New claim 9 specifies that the mousse further comprises one or more additional components selected from the group consisting of: propellants, carriers, conditioning materials, sun-screening agents, anti-dandruff actives, carboxylic acid polymer thickeners, emulsifiers, amino acids, sugars, ceramides and perfume. See, for example, page 11, line 29 to page 13, line 5, as well as the Table at page 14. New claim 10 further specifies that the conditioning materials are selected from the group consisting of cationic conditioners, quaternary silicone polymers, silicone based conditioners and their emulsions, and amino functional silicones and their emulsions. See, for example, page 12, lines 18 to 22. New claim 11 specifies that the hair treatment mouse is applied to the hair while the hair is wet or damp. See for example, page 13, lines 16 to 17.

Entry of these amendments is respectfully requested.

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Claims 1-8 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting over co-pending US Application No. 10/521,982 (the "co-pending application") in view of Yuuki et al. (JP 08-092042) and Bolich (US 4,764,363). Applicants respectfully submit that the subject method claims, as hereby amended, patentably distinguish over the composition claims of the co-pending application, claim 1 (the only independent claim) of which currently reads:

1. A hair treatment composition comprising:
 - i) 2-hydroxyalkanoic acid and;
 - ii) 0.1 to 6 wt% of a styling polymer,wherein the composition is a leave-on product

As of the date of this Amendment, the claims of the co-pending application are under Final Rejection.

It is respectfully submitted that upon the indication of otherwise allowable subject matter, the Applicants can compare the claims of the subject application and the referenced co-pending application and, as appropriate, file a terminal disclaimer, should such a disclaimer be needed. Accordingly, reconsideration of this rejection is respectfully requested.

Of the pending claims, claims 1-5 stand rejected under 35 U.S.C. 102 as anticipated by Yuuki et al. and claims 1-6 stand rejected under 35 U.S.C. 103(a) over Yuuki et al. in view of Bolich. These rejections are respectfully traversed.

Yuuki et al. is directed to a method of styling hair by applying a composition that includes, as styling ingredients, a combination of an organic acid component (a)

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(which may but need not be an alkanoic acid, e.g., 2-hydroxyhexanoic acid as in Examples 26 to 32 of the citation) and a sulfonic acid component (b), as therein more particularly described, blended in a preferred weight ratio of 10:1 ~ 1:10.¹ Yuuki et al. discloses that this combination of components permeates the hair and provides the styling benefit therein described (i.e., straightening naturally curly hair without damaging same).

In Table 1, Yuuki et al., compares compositions containing a combination of benzoic acid, benzene sulfonic acid, and organic solvent to various comparative compositions. Results are summarized in paragraph [0047] as follows:

As shown in Table 1, the naturally curly hair is corrected and this condition was maintained even when it was kept in the high temperature atmosphere and when it was washed. In contrast to this, in Comparative Examples 1 ~ 3 where any one of benzene sulfonic acid or organic solvent was not contained, the naturally curly hair was almost not corrected and, even when some site was corrected, it returned to the condition before the correction when left in the high temperature atmosphere and when washed. Also, even if the benzoic acid and benzene sulfonic acid were contained, if the content of the organic solvent was lower than the lower limit value of the preferred value of this invention as in Comparative Example 4 and, when the pH was not in the acidic range as in Comparative Example 5, the result was inferior compared to Examples of Application 1 ~ 11 although it was better when compared with Comparative Examples 1 ~ 2. (See English translation).

In contrast to Yuuki et al., which requires the presence of a sulfonic acid component (b) in the hair treatment composition therein described, the styling ingredients of the subject mousse consists essentially of 2-hydroxyalkanoic acid and, optionally, styling polymer and, optionally, a neutralizing agent for the styling polymer. It is respectfully submitted that there is nothing in Yuuki et al. that discloses

¹ In the Japanese translation accompanying the Supplemental Information Disclosure Statement filed concurrently with this Amendment, the weight ratio of 10:1 ~ 1:10 is incorrectly reported in paragraph 0028 as 0:1 ~ 1:10.

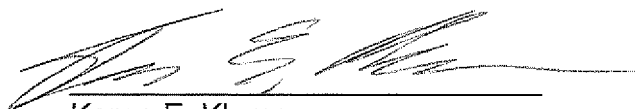
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or suggests the use of a 2-hydroxyalkanoic acid independent of its sulfonic acid component (b). In fact, the data for Comparative Example 1 (wherein the organic acid is benzoic acid and no sulfonic acid is present) teaches away from such compositions. Bolich et al. (cited for its disclosure of the use of propellant in mousse) fails to cure this deficiency.

In view of the amendments and remarks set forth above, reconsideration and allowance of the subject claims is respectfully requested.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



Karen E. Klumas
Registration No. 31,070
Attorney for Applicant(s)

KEK/sa
(201) 894-2332